

Filed 1/3/19 In re L.E. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re L.E. et al., Persons Coming
Under the Juvenile Court Law.

B284839
(Los Angeles County
Super. Ct. No. DK19328)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESSICA E.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Robin R. Kesler, Juvenile Court Referee.
Affirmed in part and dismissed in part.

Johanna R. Shargel, under appointment by the Court of
Appeal, for Defendant and Appellant.

Karen B. Stalter, under appointment by the Court of
Appeal, for Respondent Minor L.E.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Jessica S. Mitchell, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Jessica E. appeals from the juvenile court’s jurisdiction findings and disposition order declaring her children—D.H., Z.E., and L.E., then 2, 4, and 17 years old—dependents of the juvenile court under Welfare and Institutions Code section 300, subdivision (b)(1),¹ removing all three children from their fathers, and removing L.E. from Jessica. Jessica contends substantial evidence did not support the court’s finding the children were at substantial risk of serious physical harm within the meaning of section 300, subdivision (b)(1), or the court’s findings that supported their removal. We dismiss the appeal from the disposition order removing the children from their fathers, and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Referrals, Petition, and Detention*

In 2014 and 2015 the Los Angeles County Department of Children and Family Services investigated several referrals concerning Jessica and Dante H., the father of D.H., including an August 2015 referral alleging domestic violence between them. During the Department’s investigation of that referral, Jessica

¹ Undesignated statutory references are to the Welfare and Institutions Code.

admitted she and Dante “had a history of domestic violence” and stated “Dante had been physical with all of his past relationships and [she] is the only one who’s ‘done something about it.’” Jessica said the most recent incident occurred on August 2, 2015, at Dante’s house, when he slapped her in the face, “spit on her face, put her in a choke hold, slapped her and pushed her.” She said that after the incident she “made a police report and got a temporary restraining order.” L.E. told a Department social worker she had not seen any physical fights between Dante and her mother, but she knew Dante had “been physical” with her mother because her mother had told her so. At the conclusion of this investigation, Jessica and her children moved into a domestic violence shelter to get away from Dante.

In October 2016 the Department investigated another referral concerning Jessica and Dante, this one alleging, among other things, that, “5 months ago, [Dante] beat up [Jessica] by socking her in the face, pulling her hair out and throwing her around, causing her to have a bruised eye and bruises on her forehead.” During the investigation of this referral, Dante denied he ever “engaged in any domestic violence altercations” with Jessica. Jessica again admitted she and Dante had a history of domestic violence, acknowledged she and her children “went to a domestic violence shelter in order to get away from him,” but said the last incident of domestic violence between her and Dante occurred “a year ago.” L.E., however, “confirmed the details of the allegations [of the referral], stating that Dante had in the past hit [Jessica] in the face, pulled her hair, and pushed her.” Although L.E. could not provide an exact date of the incident, she stated “it happened this year.”

In November 2016 the Department filed a non-detain petition alleging D.H., Z.E., and L.E. came within the jurisdiction of the juvenile court under section 300, subdivisions (a), (b)(1), and (j). Among other things, the Department alleged: “On prior occasions in 2016, [Jessica and her] male companion, Dante [H.], father of the child [D.H.], engaged in violent altercations in which [Dante] struck [Jessica’s] face, pulled [her] hair and pushed [her] in [L.E.’s] presence. On prior occasions in 2015, [Dante] physically assaulted [Jessica] by slapping [her] face, spat on [her] face, choked . . . and pushed [her]. [Dante] has a criminal history of convictions of Battery: Spousal/Ex-Spouse and Threatened Crime with Intent to Terrorize. [Jessica] failed to protect the children in that [she] allowed [Dante] to reside in the children’s home and have unlimited access to the children. [Dante’s] violent conduct against [Jessica] and [Jessica’s] failure to protect the children” placed them at substantial risk of serious physical harm. In its detention report, the Department described the results of its 2015 and 2016 investigations.

At the initial hearing the juvenile court detained L.E. and Z.E. from their fathers (whose whereabouts were unknown), ordered they continue to be released to Jessica, and ordered D.H. continue to be released to Jessica and Dante. At L.E.’s request, the juvenile court subsequently placed her in the home of a friend’s mother.

B. *Jurisdiction and Disposition*

At the jurisdiction and disposition hearing on June 30, 2017 the juvenile court admitted into evidence reports and other documents previously filed by the Department. These showed Dante had an extensive criminal history, including a 2016

misdemeanor conviction for battery of a spouse or former spouse (Pen. Code, § 243, subd. (e)(1)) that occurred in 2014, a 2007 felony conviction for making a criminal threat (Pen. Code, § 422), and a 1990 felony conviction for forcibly committing a lewd or lascivious act with a child under the age of 14 (Pen. Code, § 288, subd. (b)). In addition to his arrest for the incident underlying the 2016 battery conviction, Dante was arrested in November 2014 for battery of a different woman with whom he had children (and who subsequently obtained a restraining order against him) and in September 2007 for inflicting corporal injury on a spouse (Pen. Code, § 273.5). He was also the only suspect in a 2001 domestic battery incident to which police responded, although it is unclear from the record whether that incident resulted in an arrest or charges. In all, Dante was convicted for, arrested for, or named as the only suspect in violent incidents against at least four women, other than Jessica, with whom he had relationships.

The documentary evidence also included an incident report from the Los Angeles County Sheriff's Department concerning the incident of domestic violence that occurred between Dante and Jessica on August 2, 2015. On that day Jessica drove five-month-old D.H. and two-year-old Z.E. to Dante's house so that Dante could visit D.H., and while standing at the foot of Dante's driveway, Jessica and Dante began to argue. The argument quickly escalated. Dante slapped Jessica in the face and grabbed her as she tried to get back into her car. He put his arm around her neck and dragged her backward up the driveway into his house. He let her go in the laundry room and blocked her exit with his body. After more arguing, he put his hands around her neck and squeezed "tight enough for her to get 'light headed.'" When Jessica tried to push him away, he

head-butted her backwards against the dryer. Now free of his grip, she squeezed past him and ran out of the house, to her car. She drove immediately to the Sheriff's station, leaving D.H. inside Dante's house.

When asked by the interviewing deputy at the Sheriff's station why she "did not immediately call 9-1-1," Jessica "stated she was scared to call 9-1-1 from the location because 'the last time' [Dante] was physical with her, she attempted to call and [he] took the phone out of her hand and broke it." Jessica also said Dante had "previously threatened to physically attack her if she called 9-1-1" and had "told her he would 'do what he has to do' to keep [D.H.]," which Jessica understood to mean "he would continue to physically attack her." The interviewing deputy also recorded that "[t]here has been one previous incident of domestic violence between [Dante and Jessica]." After the interview, the deputy drove to Dante's house to check on D.H. There, Dante's sister answered the door, refused to allow the deputy to enter, but gave D.H. to the deputy. The deputy returned D.H. to Jessica and asked if Jessica was okay. Jessica stated "she was scared to leave the presence of law enforcement because she was scared that [Dante] would go to her home to physically harm her and take [D.H]."

At the jurisdiction hearing, the juvenile court also heard testimony from Dante, Jessica, and L.E. Dante denied he ever hit Jessica, fought with her, or even argued with her. He did acknowledge he hit at least one other woman with whom he had a dating relationship, but explained "she struck me, and I had, you know, to hit her back." He also acknowledged a current warrant for his arrest for violating the condition of his probation

for the 2016 battery conviction that he complete a course of domestic violence classes.

Jessica testified she had no altercations or arguments with Dante in 2017 or 2016. She admitted they had an “argument” in August 2015, but denied Dante slapped, choked, pushed, or in any way harmed her on that occasion. She did not recall telling anyone otherwise and denied making any statement about the incident to law enforcement. Nor did she recall ever telling a Department social worker she and Dante had a history of domestic violence.

L.E. testified she had never seen Jessica and Dante have a physical fight. But a man named Lamont who was a friend of Jessica’s and “like an uncle” to L.E. told L.E. that Dante was “beating on [her] mama,” that Lamont witnessed it, and that Jessica also told him about it. When L.E. asked Jessica about what Lamont told her, Jessica said, “We’re not going to talk about this right now,” and Jessica never said anything more to L.E. about it. In her testimony L.E. also insisted she did not lie to Department social workers during her interviews.

The juvenile court sustained the petition under section 300, subdivision (b)(1), finding true the allegations of the domestic violence count, and dismissed the other counts at the Department’s request. Commenting on the evidence, the court stated that it was “very hard to believe” the testimony of Jessica and Dante and that on numerous points Jessica was “just not believable.”

Proceeding to disposition, the juvenile court found by clear and convincing evidence that there was a substantial risk of danger to the children if they remained in the physical custody of their fathers and to L.E. if she remained in the custody of Jessica

and that there were no reasonable means by which to protect the children without removing them from their fathers' care and removing L.E. from Jessica's care. The court removed all three children from their fathers and L.E. from Jessica, placed D.H. and Z.E. with Jessica, and ordered unmonitored visits for Jessica with L.E. Jessica timely appealed.

DISCUSSION

Jessica argues the juvenile court erred in finding the children were at substantial risk of serious physical harm within the meaning of section 300, subdivision (b)(1). She also argues the juvenile court erred in making the findings necessary for the children's removal, i.e., that they would be at substantial risk of harm if returned home and that there were no reasonable means to protect them without removing them. Jessica lacks standing to raise some of these arguments; the rest lack merit.

A. *Applicable Law and Standard of Review*

Section 300, subdivision (b)(1), authorizes the dependency court to assert jurisdiction when the social services agency proves by a preponderance of the evidence that "there is a substantial risk' the child will suffer serious physical harm as a result of the failure or inability of his or her parent to adequately supervise or protect the child." (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 724; accord, *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383; see *In re M.R.* (2017) 7 Cal.App.5th 886, 896 [""[t]he petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child . . . comes under the juvenile court's jurisdiction""].) "Although section 300 generally requires proof

the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citation.] The court may consider past events in deciding whether a child currently needs the court's protection. [Citation.] A parent's "[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue." (*In re Kadence P.*, at pp. 1383-1384; accord, *In re T.V.* (2013) 217 Cal.App.4th 126, 133.) To physically remove a child from his or her parent, the juvenile court "must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal." (*In re T.V.*, at p. 135; see § 361, subd. (c)(1).)

"In reviewing the jurisdictional findings and disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (*In re R.T.* (2017) 3 Cal.5th 622, 633; see *In re T.V.*, *supra*, 217 Cal.App.4th at p. 136 ["[w]e review the court's dispositional findings for substantial evidence"].)

B. *Substantial Evidence Supported the Jurisdiction Findings*

Jessica argues the evidence of past physical violence between her and Dante did not support jurisdiction under section 300, subdivision (b)(1), because (1) there was no evidence the violence was likely to continue and (2) there was no evidence the violence harmed the children or placed them at risk of harm. (See *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 [physical violence between parents may support the exercise of jurisdiction “only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm”].) She is wrong on both counts.

First, there was substantial evidence Dante’s physical violence against Jessica was likely to continue. “[P]ast violent behavior in a relationship is “the best predictor of future violence.” Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of those relationships. . . . Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner.” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576; see *In re T.V.*, *supra*, 217 Cal.App.4th at p. 133 “[a] parent’s past conduct is a good predictor of future behavior”].) The record reflects Dante had been committing physical violence against women with whom he was in a relationship for more than a decade and against Jessica, specifically, since before August 2015. Contrary to Jessica’s assertion, the record suggests Dante’s physical violence against her on August 2, 2015 was not an isolated or the most recent incident: Several details in the August 2015 incident report indicate Dante was previously

violent with Jessica (e.g., her reference to “‘the last time’ [he] was physical with her”), and in her interview with a Department social worker L.E. confirmed the details of the October 2016 referral alleging Dante had beaten Jessica only five months before. These facts distinguish this case from *In re Daisy H.*, *supra*, 192 Cal.App.4th 713, the case on which Jessica principally relies, where the only physical violence between the parents “‘happened at least two, and probably seven, years before the [Department] filed the petition.” (*Id.* at p. 717.)

Moreover, Dante showed no signs of curbing his violent propensities. Explaining he “‘had” to hit the one woman he admitted hitting, he denied all other allegations of physical violence with women and failed to attend the domestic violence classes that were a condition of his probation for the 2016 battery conviction. Finally, when a Department social worker sought to interview Jessica and Dante at home in January 2017, the two insisted on being interviewed together. Taken with the other facts in the record, it is reasonable to interpret this, as the juvenile court did, as further evidence of Jessica’s continuing, well-grounded fear of Dante.

Second, there is substantial evidence Dante’s violence against Jessica placed the children at risk of physical harm. “[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.’ [Citation.] Children can be ‘put in a position of physical danger from [spousal] violence’ because, ‘for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg.’” (*In re E.B.*, *supra*, 184 Cal.App.4th at

p. 576; see *In re M.W.* (2015) 238 Cal.App.4th 1444, 1453-1454 [“ongoing domestic violence in the household where children are living, standing alone, ‘is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it”]; *In re T.V., supra*, 217 Cal.App.4th at p. 135 [although the child was not “physically harmed, the cycle of violence between the parents constituted a failure to protect her ‘from the substantial risk of encountering the violence and suffering serious physical harm or illness from it”].)

The juvenile court found Dante lived in the household with Jessica and her children, a finding Jessica does not challenge on appeal and for which, in any event, there was substantial evidence: He spent the night there “a minimum of two to three nights per week,” was present “during every home visit conducted by [Department] social workers,” and regularly helped Jessica take care of D.H. and Z.E. Even if, as Jessica contends, the children were never directly exposed to any violence between her and Dante, a history of such violence in the children’s household “evidences an ongoing pattern that, while not yet causing harm to [them], present[s] a very real risk to [their] physical and emotional health.” (*In re John M.* (2013) 217 Cal.App.4th 410, 419; see *id.* at p. 418 [evidence of domestic violence supported jurisdiction under section 300, subdivision (b), even where the child “was not present when father beat mother”].) And in fact, at least two of the children, D.H. and Z.E., were present for at least one of Dante’s violent attacks on Jessica (the August 2, 2015 incident at Dante’s house).

C. *Jessica Lacks Standing To Challenge the Children's Removal from Their Fathers and Forfeited Her Challenge to L.E.'s Removal from Her*

Jessica does not have standing to appeal the removal of the children from their fathers. (See *In re K.C.* (2011) 52 Cal.4th 231, 236 [“only a person aggrieved by a decision may appeal”]; *In re D.S.* (2007) 156 Cal.App.4th 671, 673-674 [“the ability to appeal does not confer standing to assert issues when [a parent] is not aggrieved by the order from which the appeal is taken”].) We therefore dismiss the portion of her appeal challenging the juvenile court’s removal orders, except to the extent she challenges the order removing L.E. from her.

And the latter order Jessica not only failed to oppose, but invited. Asked by the juvenile court at disposition to respond to the Department’s proposed case plan, which included placing D.H. and Z.E. with Jessica and removing L.E. from her, counsel for Jessica responded: “I’m submitting on the children [D.H.] and [Z.E.] be released to my client. As for [L.E.], we would ask for unmonitored visits” The juvenile court then gave Jessica exactly what she asked for.² She therefore forfeited her contention the court should have done otherwise. (See *In re S.B.* (2004) 32 Cal.4th 1287, 1293 [“a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court,” and “[d]ependency matters are not exempt from this rule”]; *In re Ricky T.* (2013) 214

² A July 2, 2018 minute order, of which we take judicial notice under Evidence Code sections 452, subdivision (d), and 459, reflects that L.E., who is no longer a minor, remains a dependent of the juvenile court and that the court’s order of suitable placement remains in effect.

Cal.App.4th 515, 522 [failure to object at jurisdiction hearing forfeited issue on appeal]; *In re A.E.* (2008) 168 Cal.App.4th 1, 5 [“[t]he lack of an objection forfeited the point that father is raising on appeal”].)

DISPOSITION

The juvenile court’s jurisdiction findings and disposition order removing L.E. from Jessica are affirmed. The appeal from the disposition order removing the children from their fathers is dismissed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.